

invalid, unconstitutional, or inoperative part; and if any exception to, or any limitation upon any general provision herein contained shall be held to be unconstitutional, or invalid, the general provision shall, nevertheless, stand effective and valid, as if the same had been enacted without such limitation or exception.

SEC. 15. All laws or parts of laws in conflict herewith are hereby repealed.

SEC. 16. Provided that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

SEC. 17. The fact that the existing law does not provide an adequate system of regulation of the practice of optometry in the State of Texas, and the further fact that the calendars of the Senate and House are in a crowded condition, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House, and the further Constitutional Rule as to the time when laws take effect, be suspended, and each of them is hereby suspended, and this Act shall take effect and be in full force and effect from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 410 was passed by the House, May 1, 1939, by a vote of 112 yeas, 18 nays; by the Senate, with amendments, June 8, 1939, by a vote of 23 yeas, 2 nays; House concurred in Senate amendments, June 12, 1939, by a vote of 75 yeas, 38 nays.]

Approved June 30, 1939.

Effective 90 days after adjournment.

#### CHAPTER 5.

### CHIROPODY—BOARD OF EXAMINERS, LICENSES AND EXAMINATION.

#### H. B. No. 195.]

An Act regulating the practice of chiropody; providing the terms of members of the Board of Chiropody Examiners; prescribing their duties; providing for the examination and licensing of applicants to practice chiropody and the recording of licenses issued to chiropodists; providing for annual registration; providing civil and criminal remedies and penalties for violation of the laws regulating the practice of chiropody; amending Articles 4568, 4569, 4570, 4571 and 4572 of the Revised Civil Statutes of Texas of 1925; and also amending Article 778 of the Penal Code of Texas, 1925; and amending Chapter 11, Title 12 of the Penal Code of Texas, 1925, by adding thereto a new Article, to be known as Article 778-a; and otherwise regulating and protecting public health, as dealt with in the profession of chiropody, as in the Act set out; repealing all laws and parts of laws in conflict therewith, and declaring certain legislative intent with respect to this Act; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Article 4568 of the Revised Civil Statutes of Texas of 1925 is hereby amended so that the same shall hereafter read as follows:

"Article 4568. The State Board of Chiropody Examiners shall consist of six (6) reputable practicing chiropodists who have resided in the State of Texas, and who have been actively engaged in the practice of chiropody for a period of five (5) years immediately preceding their appointment, none of whom shall be members of the faculty of any chiropody college, or the chiropody department of any medical college, or shall have a financial interest in such colleges. The term of office of each member of said Board shall be six (6) years, except as to the first Board appointed hereunder. Two (2) of its members shall serve for a period of two (2) years; two (2) of its members shall serve for a period of four (4) years; and two (2) of its members shall serve for a period of six (6) years. The respective terms of the first members so appointed shall be designated by the Governor so appointing them, within thirty (30) days after this Act becomes effective. The six (6) members of said Board shall be appointed by the Governor of this State, two (2) to serve two (2) years, two (2) to serve four (4) years, and two (2) to serve six (6) years, or until their successors have been appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of this State and he shall serve for a term of six (6) years, or until his successor shall be appointed and qualified. The members of the State Board of Chiropody Examiners shall, before entering upon the duties of their offices, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number a president, vice-president and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars (\$5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer; and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the State Board of Chiropody Examiners.

"Said State Board of Chiropody Examiners shall hold meetings at least twice a year and special meetings when necessary at such times and places as the Board deems most convenient for applicants for examinations for license. Due notice of such meetings shall be given by publication in two (2) daily newspapers as may be selected by the Board. Special meetings shall be held upon request of a majority of the members of the Board, or upon the call of the president. Four (4) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any

meeting, those present may adjourn from day to day until a quorum be present.

"The Board shall adopt all reasonable or necessary rules, regulations, and bylaws, not inconsistent with this Act, the laws of this State, or of the United States, to govern its proceedings and activities, the regulation of the practice of chiropody and the enforcement of this Act. The Board shall have power to appoint committees from its own membership, the duties of which shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to said committees, and to make recommendations to the Board with respect thereto; to employ the services of stenographers, inspectors, and other necessary assistants in the carrying out of the provisions of this Act. The Board, any committee, or any members thereof shall have the power to issue subpoenas and to compel the attendance of witnesses and the production of books, records, and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act or the regulations promulgated in accordance therewith, and in such connection a temporary injunction may be granted. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, 'Texas State Board of Chiropody Examiners.' The secretary-treasurer of the Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, age, known place of residence, the name and location of the school of chiropody from which he holds credentials and the time devoted to the study and practice of the same, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. A certified copy of said record, with the hand and seal of the secretary of said Board, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary-treasurer of the Board. The records shall be kept by the secretary-treasurer of the Board,

and such records shall be audited biennially during the month of January by a certified public accountant, a report of the findings of such audit shall be made to the Governor of this State, and a copy of said report shall be delivered to the secretary-treasurer of the Board, who shall retain same as a permanent record of the office.

"The Board shall cause the prosecution of all persons violating any of the provisions of this Act and may incur the expense reasonably necessary in that behalf."

SEC. 2. Article 4569 of the Revised Civil Statutes of Texas of 1925 is hereby amended so that the same shall hereafter read as follows:

"Article 4569. It shall be the duty of the Board to examine all applicants for license to practice chiropody in this State, and the Board shall examine and grade all papers submitted by such applicants and report to such applicants, within sixty (60) days from the date of any meeting of said Board, and said report shall give to such applicant the grades made by such applicant upon each and every subject upon which he or she was examined by said Board. Each person applying for examination shall pay to the Board a fee of Thirty-five Dollars (\$35) at least fifteen (15) days before the date set by the Board for the examination, and upon passing a satisfactory examination before said Board on subjects pertaining to chiropody, shall be granted a license to practice chiropody in this State. The subjects one must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, chiropody, bacteriology, and mechanical orthopedics, limited in their scope to the treatment of ailments of the human foot, and the examinations are to be written in the English language. Any applicant failing in the examination and being refused a license shall be entitled to a re-examination, at the next regular session of said Board within one year. Any applicant failing on re-examination shall be required to pay an additional fee and shall be required to be re-examined in all subjects."

SEC. 3. Article 4570 of the Revised Civil Statutes of Texas of 1925 is hereby amended so that the same shall hereafter read as follows:

"Article 4570. All applicants for license to practice chiropody in this State, not otherwise licensed under the provisions of law, shall present satisfactory evidence to the State Board of Chiropody Examiners that such applicants have attained the age of twenty-one (21) years, are of good moral character and are free of all contagious and communicable diseases, and furnish a certified certificate of health to that effect, and are citizens of the United States of America and who are graduates of at least a sixteen (16) unit high school, whose credits are acceptable without condition for matriculation at the State University of the State in which applicant's high school graduation was attained. The applicant shall present satisfactory evidence of graduation from a bona fide reputable school of chiropody in

the form of a diploma which has conferred the degree of Doctor of Surgical Chiropody, to the State Board of Chiropody Examiners. Such chiropody schools may be considered reputable, within the meaning of this Act, whose entrance requirements and course of instruction are as high as those adopted by the University of Texas, and whose course of instruction shall embrace at least four (4) terms of at least eight (8) months each, and which meets the requirements of the State Board of Chiropody Examiners. Provided, however, the Board may, in its discretion, accept applicants from chiropody schools whose course of instruction embraces at least three (3) terms of at least eight (8) months each; and provides for one term of eight (8) months instruction in a recognized college of liberal arts or sciences shall be approved by this Board."

SEC. 4. Article 4571 of the Revised Civil Statutes of Texas of 1925 is hereby amended so that the same shall hereafter read as follows:

"Article 4571. On or before the first day of September, 1939, and on or before September 1st of each succeeding year, every chiropodist licensed in this State shall pay to the Secretary-Treasurer of the State Board of Chiropody Examiners an annual renewal fee of Ten Dollars (\$10) for the renewal of his license to practice chiropody for the current year. On receipt of said renewal fee the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information from the records of said Board that said Board may deem necessary. When a chiropodist shall fail to pay his annual renewal fee by March 1st, it shall be the duty of the Board of Chiropody Examiners to notify such chiropodist at his last known address, by mail, that said annual renewal fee is due and unpaid. Thirty (30) days after the date of mailing said notice, it shall be the duty of the Board under this Act to declare the license suspended or revoked for nonpayment of the annual renewal fee. The Board shall notify the district clerk of the county in which such license may have been recorded and such clerk, upon receipt of notification from said Board, shall enter upon the chiropody register of such county the fact that such license is suspended or revoked for nonpayment of the annual renewal fee, and shall notify the Board in writing that such entry has been made. Practicing chiropody without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and subject to all penalties of practicing chiropody without a license. After the Board has declared a license suspended or revoked, as provided for in this Act, the Board may thereafter in its discretion refuse to reinstate such license or issue a new license until such chiropodist, whose license has been declared suspended or revoked for nonpayment of annual renewal fee, has passed a regular examination for license, as provided for by this Act. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his applica-

tion to the Board for duplicate license, together with his affidavit of loss or destruction, and that he is the same person to whom said license was issued, and shall, upon the payment of a fee of Ten Dollars (\$10), be granted a license under this law. If the records of said Board fail to show that such person was ever licensed, the Board may exercise its discretion in granting said duplicate license.

“Every person practicing chiropody in this State shall display the license and annual renewal certificate in a conspicuous place in the office wherein he practices chiropody and whenever required shall exhibit such license or certificate to the Board or its authorized representative.”

SEC. 5. Article 4572 of the Revised Civil Statutes of Texas of 1925 is hereby amended so that the same shall hereafter read as follows:

“Article 4572. The State Board of Chiropody Examiners may, in its discretion, upon payment by the applicant of a registration fee of One Hundred Dollars (\$100), grant a license to practice chiropody to any reputable chiropodist who is a graduate of a reputable college of chiropody, and to licentiates of other States or territories having requirements for chiropody registration and practice equal to those established by this law. Application for license, under provisions of this Act, shall be in writing and upon a form to be prescribed by the State Board of Chiropody Examiners. Said application shall be accompanied with a diploma or photograph thereof awarded to the applicant by a reputable college or chiropody lawfully issued to the applicant by some other State or territory, and also be accompanied by an affidavit from the President or Secretary of the Board of Chiropody Examiners who issued the said license, or by the legally constituted chiropody registration office of a State or territory in which the certificate or license was granted upon which the application for chiropody registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked and that the statement of qualifications made in the application for chiropody registration in Texas is true and correct. Applicants for license under provisions of this Act shall subscribe to an oath in writing, which shall be a part of said application stating that the license or certificate or authority under which the applicant practiced chiropody in the State or territory from which the applicant removed was, at the time of such removal, in full force and not suspended or cancelled. That the applicant is the identical person to whom said certificate or license or said chiropody diploma was issued and that no proceedings were pending at the time of such removal, or are at the present time pending, against the applicant for the cancellation of such certificate, license or authority to practice chiropody in the State or territory in which the same was issued, and that no prosecution was then or is at the time of the application pending against the applicant in any

State or Federal Court for any offense, which, under the laws of Texas, is a felony."

SEC. 6. Article 778 of the Penal Code of Texas, 1925, is hereby amended so that the same shall hereafter read as follows:

"Article 778. Chiropody means the diagnosis, medical and surgical treatment of ailments of the human foot. A chiropodist is one practicing chiropody. Whoever professes to be a chiropodist or practices or assumes the duties incident to chiropody, without first obtaining from the State Board of Chiropody Examiners a license authorizing the practice of chiropody, or who shall employ or agree to employ, pay or promise to pay, any person, persons, firms, partnerships or corporations for securing, soliciting or drumming patients, and any person who accepts or agrees to accept employment or payment for securing, soliciting or drumming patients for a chiropodist shall be punished by a fine of not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment for each offense. Each payment, reward, fee or agreement to pay, or accepting a reward or fee, shall constitute a separate offense."

SEC. 7. Chapter 11, Title 12 of the Penal Code of Texas of 1925 is hereby amended by adding thereto, immediately after Article 778, as amended herein, a new Article, to be entitled Article 778-a, and to read as follows:

"Article 778-a. It shall be unlawful for any person or persons to practice chiropody in this State under the name of a corporation, company, association, joint stock company or partnership, or trade name, or under any name other than his own proper name, which shall be the name in his license, as issued by the State Board of Chiropody Examiners. Each day of violation of the Article shall constitute a separate offense."

SEC. 8. All laws or parts of laws in conflict herewith are hereby repealed.

SEC. 9. If any Article, section, subsection, sentence, clause, or phrase of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of any remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SEC. 10. The fact that the present law regulating the practice of chiropody is enacted to protect the public health, and that new legislation better protects the public health, creates an imperative public necessity that the Constitutional Rule, requiring all bills to be read on three separate days in each House, be and the

same is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 195 was passed by the House, April 6, 1939, by a viva voce vote; by the Senate, with amendments, May 24, 1939, by a vote of 30 yeas, 0 nays; House requested appointment of Conference Committee, May 31, 1939; Senate adopted Conference Committee Report, June 13, 1939, by a vote of 26 yeas, 0 nays; House adopted Conference Committee Report, June 13, 1939, by a vote of 116 yeas, 16 nays.]

Approved July 11, 1939.  
Effective July 11, 1939.

## CHAPTER 6.

### EMBALMING—BOARD OF.

S. B. No. 276.]

An Act providing for the establishment of a State Board of Embalming, providing for the appointment and terms of the members thereof and for their removal, granting powers and imposing duties upon said Board; and placing the appointive power of the members of the Board in the Governor, with the approval of the Senate; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. The State Board of Embalming shall consist of six (6) members who shall be licensed embalmers experienced in the business and in the care and disposition of dead human bodies. The members of said Board holding office at the time of the effective date of this Act shall continue to hold office for the duration of the terms for which they were appointed. Any vacancies existing on the Board at the time of the effective date of this Act shall be filled by the Governor of Texas subject to confirmation by the Senate, and the Governor shall thereafter have the power to fill vacancies on the Board as they occur, and shall in appointing said members so designate their terms that two (2) places on the Board shall become vacant each two (2) years. The term of office of each member shall be six (6) years. All appointments shall be confirmed by a two-thirds vote of the Senate of Texas. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. The Governor may, after hearing, remove any member of said State Board of Embalming for neglect of duty, incompetency or fraudulent or dishonest conduct. Each person appointed to said Board shall be furnished by the Governor with a certificate of appointment upon which it shall be noted that the appointee has taken the official oath provided by the Constitution.

SEC. 2. The State Board of Embalming is hereby granted the powers and there is imposed upon it the duties provided in Articles 4577 to 4582, inclusive, Revised Civil Statutes of Texas.